

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: APRIL 24, 2007

DOCKET NO: W-03880A-06-0298 and W-20459A-06-0298

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

JNJ ENTERPRISES dba GARDNER WATER COMPANY
(CC&N AND TRANSFER OF ASSETS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 3, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

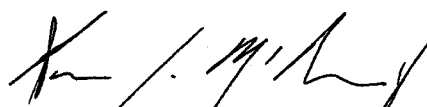
MAY 8, 2007 and MAY 9, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.


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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF JNJ
9 ENTERPRISES, DBA GARDNER WATER
10 COMPANY AND UTILITY SYSTEMS, LLC FOR
11 APPROVAL OF THE TRANSFER OF ASSETS
12 AND CERTIFICATE OF CONVENIENCE AND
13 NECESSITY TO UTILITY SYSTEMS, LLC.

DOCKET NO. W-03880A-06-0298
DOCKET NO. W-20459A-06-0298

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: February 7, 2007

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

14 APPEARANCES: Mr. Gerald Lenzion on behalf of JNJ Enterprises dba
15 Gardner Water Company;

16 Mr. Jeffery Daniels on behalf of Utility Systems, LLC;
17 and

18 Ms. Robin Mitchell, Staff Attorney, Legal Division, on
19 behalf of the Utilities Division of the Arizona
20 Corporation Commission.

21 **BY THE COMMISSION:**

22 On May 1, 2006, JNJ Enterprises, LLC, dba Gardner Water Company ("Gardner"), filed with
23 the Arizona Corporation Commission ("Commission") an application to transfer its assets and
24 Certificate of Convenience and Necessity ("CC&N") to Utility Systems, LLC ("Utility Systems").

25 On June 1, 2006, the Commission's Utilities Division Staff ("Staff") filed a letter informing
26 the Applicant that the application was insufficient.

27 On October 20, 2006, Staff filed a Sufficiency Letter in this matter.

28 On November 7, 2006, by Procedural Order, the hearing in this matter was set to convene
beginning February 7, 2007, and other procedural deadlines were determined.

On November 17, 2006, Gardner filed a Notice of Publication.

1 On February 7, 2007, a full public hearing was held by the Commission at its offices in
 2 Phoenix, Arizona before a duly authorized Administrative Law Judge of the Commission. Staff
 3 appeared through counsel. Mr. Gerald Lenzion and Mr. Jeffery Daniels appeared on behalf of
 4 Gardner and Utility Systems, respectively, and presented evidence and testimony. No members of
 5 the public appeared to give public comments. At the conclusion of the hearing, the matter was taken
 6 under advisement pending the submission of late-filed exhibits and a Recommended Opinion and
 7 Order to the Commission

8 On March 13, 2007, Gardner filed a Late-Filed exhibit in this matter.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
 11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. On May 11, 2006, Gardner filed an application to transfer its assets and CC&N to
 14 Utility Systems. The owner of Gardner, Mr. Gerald Lenzion, stated he wished to sell the Utility
 15 Systems "for personal reasons."

16 2. Gardner provides service to approximately 91 customers in a service territory of
 17 approximately 145 acres, located in parts of Sections 25, 26, 35, and 36 in Township 10 ½ North
 18 Range 14 East. Gardner's service territory is located approximately 30 miles east of Payson and
 19 South of Highway 260 in Gila County. Gardner's service area is illustrated in Exhibit A, attached
 20 hereto and incorporated herein by reference.

21 3. On January 8, 2007, Staff filed its Staff Report recommending denial of the
 22 application because Gardner was out of compliance with Commission rules and regulations and
 23 previous Commission decisions regarding accounting practices. Further, Staff's Report stated that
 24 Gardner is also out of compliance with the rules and regulations of the Arizona Department of
 25 Environmental Quality ("ADEQ") regarding monitoring and reporting. Therefore, Staff believes it is
 26 not in the public interest to transfer the assets and CC&N until Gardner is in compliance with ADEQ
 27 and Commission requirements.

28 4. Staff's Report further stated that Staff would reconsider its recommendation for denial

1 of Gardner's application if Gardner could by the date of the hearing in this matter: 1) file ADEQ
2 documentation demonstrating that its system is delivering water that meets ADEQ standards; 2) file
3 documentation indicating that its 2005 property taxes are paid; 3) and file documentation that its
4 accounting records are being kept in accordance with the National Association of Regulatory
5 Uniform Commissioners ("NARUC") system of accounts.

6 5. On February 7, 2007, a full public hearing was held as scheduled in this matter.

7 6. According to Staff's Report, Mr. Lenzion does not live full-time in the Payson area
8 and is in the process of selling both Christopher Creek Haven Water Company¹ ("Christopher
9 Creek") and Gardner to Utility Systems. At hearing, Mr. Daniels, the owner of Utility Systems and
10 the on-site manager and certified operator for the Gardner system, indicated he has been running the
11 system for a year and a half and he is better able to respond to problems with the system because he
12 lives in the area and Mr. Lenzion does not.

13 7. Gardner included with its application a Commercial Real Estate Purchase Contract,
14 showing a purchase price of \$280,000 for both Christopher Creek and Gardner, with \$220,000 being
15 carried by Mr. Lenzion. Staff further stated the sale is contingent upon Commission approval, upon
16 the carry back of Mr. Lenzion and upon continued carry back of Carol Powell, the previous owner
17 of Christopher Creek. Additionally, the contract states Mr. Lenzion will stay on for one year as a
18 consultant at no cost to the buyer.

19 8. In its Staff Report, Staff noted that the combined 2005 annual report filed for both
20 Christopher Creek and Gardner had some discrepancies. Staff stated that for the combined
21 companies, the unaudited balance sheet showed total assets of \$259,363, and liabilities and capital of
22 \$155,942, which led Staff to question the value of the assets for the utilities.

23 9. Staff's Report noted that in Commission Decision No. 64197 (November 8, 2001),
24 Gardner was ordered to keep its books and records in accordance with the NARUC system of
25 accounts as required by A.A.C. R14-2-411.D.2. Staff concluded that because Gardner's balance
26 sheet did not balance, Gardner was not keeping its records in accordance with NARUC system of
27

28 ¹ Commission Decision No. 69421 (April 16, 2007) approved the application of Christopher Creek Haven Water Company for the sale of its assets and the of transfer its CC&N to Utility Systems.

1 accounts and Gardner was therefore in violation of Commission Decision No. 64197.

2 10. At hearing, Mr. Lendzion testified that he believed he was keeping Gardner's books
3 according to the NARUC system of accounts. Mr. Daniels, the current certified operator of the
4 system, testified that he has ordered the manual that explains how to keep the books according to
5 NARUC standards and that he would be talking with Gardner's accountant about keeping the books
6 in accordance with the standards.

7 11. Staff's Report stated that the utilities' combined annual report showed a total of 250
8 customers at the end of 2005, net plant of \$251,746, zero customer deposits and zero advances in aid
9 of construction. The utilities' combined annual report showed long term debt of \$108,384, which
10 consisted of \$106,384 for the purchase of the water companies and \$2,000 owed to Mr. Lendzion for
11 operating costs. Staff noted the combined annual report showed that principal and interest on the
12 two loans from the non-affiliates equals approximately \$17,400 per year, and that the combined
13 utilities generated losses of \$56,388 in 2004 and \$29, 824 in 2005.

14 12. Due to the poor financial health of Gardner, Staff recommends that Gardner file a rate
15 case by March 31, 2008, using a 2007 test year.

16 13. Staff's Report also indicated that the combined utilities' annual report did not contain
17 the cancelled checks reflecting payment of the 2005 property taxes.

18 14. At hearing, Mr. Lendzion testified that he had submitted to Staff copies of the
19 cancelled checks reflecting the payment for the 2005 property taxes for both Gardner and Christopher
20 Creek. Staff's witness verbally modified its recommendation at hearing, stating Gardner had satisfied
21 the requirement to provide proof that the utilities' property taxes had been paid for 2005.

22 15. According to Staff's Engineering Report, Gardner's water system consists of two
23 wells, two pressure tanks and a distribution system. The two wells produce a total of 55 gallons per
24 minute ("GPM") and at hearing Staff testified that the Gardner system has adequate capacity to serve
25 its existing customer base and a reasonable amount of growth.

26 16. Staff's Report further stated that Gardner added six new connections in 2006.

27 17. Staff recommends that non-account water loss be 10 percent or less, but never more
28 than 15 percent. Staff's Report noted that Gardner's non-account water loss was calculated to be

1 12.4 percent during 2005, which exceeded the recommended threshold amount of 10 percent.

2 18. Staff's Report also stated that in Commission Decision No. 63199 (November 30,
3 2000), Gardner was required to submit a plan to reduce its water loss to a maximum of 10 percent
4 within 30 days of that Decision. Staff further stated that Gardner did not submit a plan, but filed a
5 letter in that docket, indicating that the previous owners had made repairs to the system to reduce
6 water loss.

7 19. At hearing, Mr. Lendzion provided a Water Use Data Sheet for the year 2006 for the
8 Gardner system. He testified that he was aware that the system did have some leaks at the beginning
9 of the year and that the leaks had been repaired by the certified operator for the system. Staff's
10 engineering witness testified that Staff had reviewed Gardner's Water Use Data Sheet for 2006 and it
11 appeared that the system did have some leaks early in the year, but that the latter months showed
12 Gardner's non-account water loss to be approximately 7 percent and within Staff's recommended
13 threshold of 10 percent.

14 20. The Gardner water system is regulated by the ADEQ and is identified as Public Water
15 System ("PWS") ID# 04-038. Staff reported that ADEQ was unable to determine whether the
16 Gardner system is currently delivering water that meets water quality standards as required by the
17 Arizona Administrative Code ("A.A.C."), due to major monitoring and reporting deficiencies relating
18 to missing tests for total coliform in 2006.

19 21. At hearing, the ADEQ's Drinking Water Primary Microbiological Analysis Reports
20 were submitted into evidence for the months of July 2006 through February 2007, which showed zero
21 presence for total coliform. Staff's witness stated at hearing that he had reviewed the test results
22 which showed no presence of coliform; however, ADEQ and not Staff needed to determine that the
23 Gardner system was delivering water that meets water quality standards as required by the A.A.C.

24 22. At hearing, Staff continued to recommend that Gardner's application to transfer its
25 assets and CC&N be denied because of Gardner's non-compliance with ADEQ requirements. Staff's
26 witness stated it would reevaluate its recommendation if Gardner were to file ADEQ documentation
27 demonstrating that PWS ID #04-038 is delivering water that meets water quality standards as
28 outlined in the A.A.C.

1 23. On January 23, 2006, the U.S. Environmental Protection Agency ("EPA") reduced the
2 arsenic maximum containment level ("MCL") from 50 parts per billion ("ppb") to 10 ppb.
3 According to Staff's Report, the Gardner system is delivering water below the new maximum arsenic
4 standard.

5 24. If Gardner's application in this docket is approved, the Gardner system will be run by
6 the ADEQ certified operator of Utility Systems.

7 25. According to Staff's Report, Gardner is not in an Arizona Department of Water
8 Resources ("ADWR") Active Management Area ("AMA"), and is not required to comply with
9 ADWR monitoring and reporting requirements.

10 26. On March 13, 2007, Gardner filed as a late-filed exhibit, documentation from ADEQ
11 demonstrating that its water system is currently delivering water that meets water quality standards as
12 required by the A.A.C.

13 27. On March 20, 2007, Staff filed a response to Gardner's late-filed exhibit regarding
14 Gardner's compliance with ADEQ. Staff stated that based on Gardner's compliance with ADEQ,
15 Staff recommends that Gardner's application for the transfer of CC&N and assets be approved;
16 however, Staff continued to support its other recommendations as presented at hearing in this matter.

17 28. Based on the information presented at hearing, Staff recommends approval of
18 Gardner's application to transfer its assets and CC&N to Utility Systems, subject to the following
19 conditions:

20 a. That Utility Systems file documentation that its accounting records are being
21 kept in accordance with the NARUC system of accounts and

22 b. That Utility Systems file a rate case by March 31, 2008, using a 2007 test year.

23 29. Staff's recommendations as outlined above are reasonable, except that if Utility
24 Systems fails to comply with the conditions outlined above within the timeframes stated, the transfer
25 of assets and CC&N should be considered null and void after due process.

26 30. Because an allowance for the property tax expense is included in Utility Systems'
27 rates and will be collected from its customers, the Commission seeks assurances from Utility Systems
28 that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has

1 come to the Commission's attention that a number of water companies have been unwilling or unable
2 to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as
3 twenty years. It is reasonable, therefore, that as a preventive measure Utility Systems shall annually
4 file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is
5 current in paying its property taxes in Arizona.

6
7 **CONCLUSIONS OF LAW**

8 1. Gardner is a public service corporation within the meaning of Article XV of the
9 Arizona Constitution and A.R.S. § 40-281, 40-282 and 40-285.

10 2. The Commission has jurisdiction over Gardner and the subject matter of this
11 application.

12 3. Notice of the application was provided in accordance with the law.

13 4. There is a public need and necessity for water service in the service territory.

14 5. Subject to compliance with the above stated conditions, Utility Systems is a fit and
15 proper entity to receive Gardner's CC&N and its assets.

16 6. Approval of the transfer of Gardner's assets and the transfer of its CC&N to Utility
17 Systems is in the public interest.

18 7. The transfer application should be granted subject to the conditions set forth above.
19

20 **ORDER**

21 IT IS THEREFORE ORDERED that the application of JNJ Enterprises dba Gardner Water
22 Company for approval of the transfer of its assets and the transfer of its Certificate of Convenience
23 and Necessity to Utility Systems, LLC, is hereby approved conditioned on JNJ Enterprises dba
24 Gardner Water Company's and Utility Systems, LLC's compliance with the following Ordering
25 Paragraphs.

26 IT IS FURTHER ORDERED that Utility Systems, LLC shall file a rate case with the Arizona
27 Corporation Commission by March 31, 2008, using a 2007 test year.

28 IT IS FURTHER ORDERED that Utility Systems, LLC shall maintain its books and records

1 in accordance with the National Association of Regulatory Commissioners Uniform System of
2 Accounts.

3 IT IS FURTHER ORDERED that that if Utility Systems, LLC fails to comply with the above
4 stated conditions within the required time-frames the transfer of assets and transfer of Certificate of
5 Convenience and Necessity conditionally granted herein shall become null and void, after due
6 process.

7 IT IS FURTHER ORDERED that JNJ Enterprises dba Gardner Water Company and Utility
8 Systems, LLC shall annually file as part of its annual report, an affidavit with the Utilities Division
9 attesting that it is current on paying its property taxes in Arizona.

10 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12
13
14 CHAIRMAN

COMMISSIONER

15
16 COMMISSIONER

COMMISSIONER

COMMISSIONER

17
18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Director of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this ____ day of _____, 2007.

23
24 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

25
26 DISSENT _____

27
28 DISSENT _____

YK:db

1 SERVICE LIST FOR: GARDNER WATER COMPANY and UTILITY
2 SYSTEMS, LLC.

3 DOCKET NOS.: W-03880A-06-0298 and W-020459A-06-0298

4 Gerald Lendzion
5 GARDNER WATER COMPANY
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7 Jeffery Daniels
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9 Christopher Kempley, Chief Counsel
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12 Ernest G. Johnson, Director
Utilities Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington
Phoenix, AZ 85007

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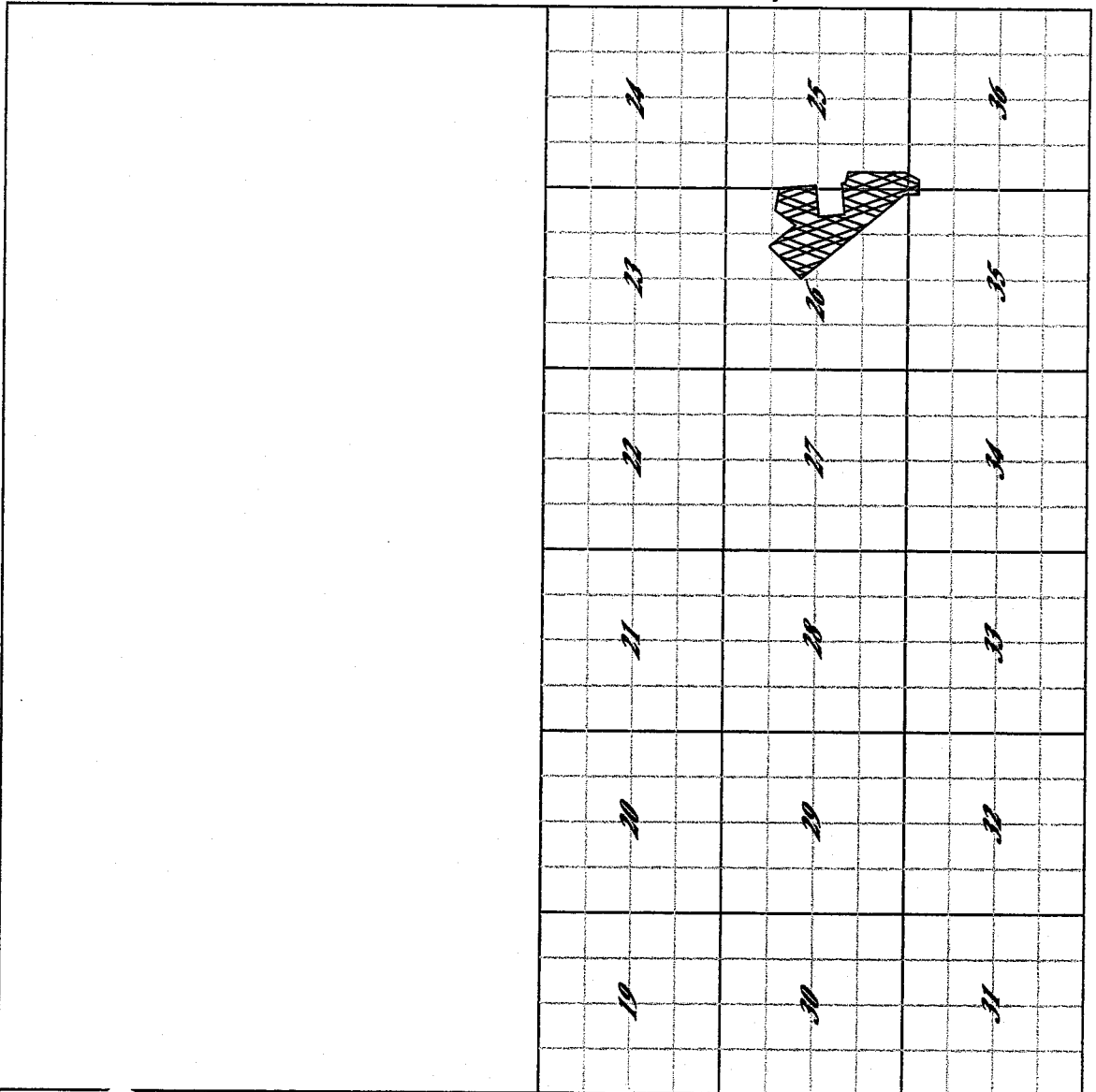
27

28

COUNTY *Gila*

RANGE 14 East

TOWNSHIP 10-1/2 North



 W-3880 (2)
JNJ Enterprises, LLC (Gardner)

JNJ Enterprises, LLC
(Gardner Water Company)
Docket No. W-03880A-06-0298
Application to Transfer to
Utility Systems, LLC
Docket No. W-20459A-06-0298

EXHIBIT "A"

DECISION NO. _____